IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 3548 of 2005

Between:

1. S. Madhusudhanarao,

   S/o Satyanarayana, Aged about 43 years, R/o 9-1-14, Akkayyapalem,

   Visakhapatnam-16.

2. M. Chandrarao, S/o Ramnaidu, Aged about 58 years,

   R/o 49-1-2, Akkayyapalem, Visakhapatnam-16.

3. Smt. A. Appalaraju, B/o Bangaraiah, Aged about 50 years,

   R/o 45-40-30, Akkayyapalem, Visakhapatnam-16.

4. M. Simhachalam, S/o Appanna, Aged about 65 years,

   R/o 49-1-13, Akkayyapalem, Visakhapatnam-16.

5. Smt. M. Venkataratnam, W/o Chiranjeevirao, aged about 45 years,

   R/o 49-34-32, Akkayyapalem, Visakhapatnam.

6. K. Sanjeevarao, S/o Tatayya, aged about 50 years,

   R/o 49-1-14/1, Akkayyapalem, Visakhapatnam.

7. Smt. B. Aruna, W/o Dakshinamurthy, aged about 25 years,
R/o 49-1-19/4, Akkayyapalem, Visakhapatnam.

8. Smt. K. Appalakonda, W/o Simhadri, aged about 50 years,
R/o 49-1-17, Akkayyapalem, Visakhapatnam.

9. G. Satyanarayana, S/o Chitti Naidu, aged about 38 years,
R/o 49-34-32/2, Akkayyapalem, Visakhapatnam.

10. K. Apparao, S/o Mutyalu, aged about 44 years,
R/o 49-1-1, Akkayyapalem, Visakhapatnam.

11. Smt. S. Sarada, W/o Shankararao, aged about 30 yers,
R/o 49-3-50, Kummaraveedhi Dondaparthi, Visakhapatnam.

12. B. Chandrasekhara Reddy, S/o Reddy, aged about 45 years,
R/o 43-30-30, Dondarparthi, Visakhapatnam.

13. Y. Saroja, W/o Narayanarao, ageed about 62 years,
R/o 49-1-19/8, Lalithanagar, Akkayyapalem, Visakhapatnam-16.

14. Smt. M. Annapurna, W/o Sambamurthy, aged about 69 years,
R/o 49-1-18, Lalithanagar, Akkayyapalem, Visakhapatnam-16.

15. A. Satyanarayana, S/o Appalanaidu, aged about 34 years,
R/o 46-11-1, Alluri St, Dondaparthi, Visakhapatnam-16.

16. M. Srinivasarao, S/o Venkataram, aged about 38 years,
R/o 45-47-23, Akkayyapalem, Visakhapatnam-16.

.... PETITIONERS

AND

Visakhapatnam Municipal Corporation,

Represented by its Commissioner and Special Officer,

Visakhapatnam Municipal Corporation,

Visakhapatnam.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus or any other appropriate writ and direct the respondent to act in accordance with law and forbear from interfering with the possession and enjoyment of the petitioners in respect of their house plots and houses in D.Nos.49-1-14, 49-1-2, 45-40-30, 49-1-13, 49-34-32, 49-1-14/1, 49-1-19/4, 49-1-17, 49-34-32/2, 49-1-1, 46-3-50, 43-30-30, 49-1-19/8, 49-1-18, 46-11-1, 45-47-23 situated in Lalithanagar, Dondaparthi of Akkayyapalem, Visakhapatnam without following the procedure of law and without providing opportunity and hearing the petitioner about the proposed action.

Counsel for the Petitioners: MR.G.L.NAGESWARA RAO

Counsel for the Respondent: MR.T.S.VENKATA RAMANA, Standing Counsel for Visakhapatnam Municipal Corporation.

This Court at the admission stage made the following :

O R D E R:

Heard the learned counsel for the petitioners and the learned standing counsel appearing for the respondent.

The petitioners seek a Writ of Mandamus to declare the proposed action of the respondent in trying to demolish their houses bearing D.Nos. 49-1-14, 49-1-2, 45-40-30, 49-1-13, 49-34-32, 49-1-14/1, 49-1-19/4, 49-1-17, 49-34-32/2, 49-1-1, 46-3-50, 43-30-30, 49-1-19/8, 49-1-18, 46-11-1 and 45-47-23 situated in Lalithanagar, Dondaparthi

of Akkayyapalem, Visakhapatnam without following due process of law for the purpose of proposed road widening work, as arbitrary and illegal.

It is represented by the learned counsel appearing for both parties that the issue involved in this writ petition is squarely covered by a decision of this Court in W.P. No. 21198 of 1997 and batch, dated 03-02-1998, wherein the Division Bench while considering an identical question, issued guidelines as under:

> *"1. Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.*

2. *If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment of unauthorized occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.*

3. *In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.*

4. *If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.*

5. *In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.*

6. *If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status-quo obtaining as on today regarding the structures."*

The learned standing counsel appearing for the respondent does not dispute the above legal position.

The writ petition is accordingly disposed of directing the respondent not to demolish the structures in question without following the guidelines issued by the Division Bench in common order dated 03-02-1998 in W.P. No. 21198 of 1997 and batch. No costs.

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(**G. ROHINI, J**)

Date: 24-02-2005

ghn

To

1. The Commissioner and Special Officer, Visakhapatnam Municipal Corporation, Visakhapatnam.

2. Two CD copies.

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.3548 OF 2005

OPERATIVE PORTION (BY WIRE):

The writ petition is accordingly disposed of directing the respondent not to demolish the structures in question without following the guidelines issued by the Division Bench in common

order dated 03-02-1998 in W.P. No. 21198 of 1997 and batch. No costs.

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(**G. ROHINI, J**)

Date: 24-02-2005

Note:

Issue wire at party's costs.

Please send the bundle to the Court Masters Section after dispatch of the wire order.

B/o

ghn